

We may grant a motion for involuntary dismissal based solely on the allegations presented to us in the complaint, when such allegations demonstrate our lack of jurisdiction.

1 CSR 15-3.436(1)(A) and (4).¹ Here, the Department’s motion is based in part on Mr. Higgins’ complaint, and we base our below Findings of Fact on those allegations, assuming for purposes of the motion that the allegations are true.

The Department additionally submitted unauthenticated letters with its motion, but they are not admissible evidence as required by regulation, 1 CSR 15-3.436(3), and we therefore do not consider them.

Findings of Fact

1. Nicholas G. Higgins is listed as a reference on Amy L. Higgins’ federal student loan account, serviced by the Missouri Higher Education Loan Authority, and is not liable for Ms. Higgins’ failure to repay the loan.²

2. Mr. Higgins received a Notice of Proposed Offset of Missouri State Taxes, dated November 8, 2012 from the Missouri Department of Higher Education (MDHE) Student Loan Program, advising him that the loan was in default, and that he needed to make arrangements to repay it or MDHE would certify the debt to the Missouri Department of Revenue under § 143.781, RSMo (2000), for offset of any state of Missouri income tax refund to which he may be entitled. The notice advised Mr. Higgins that he had 20 days to request review of his records with MDHE, and 30 days to arrange for payment.³

3. On November 19, 2012, Mr. Higgins sent MDHE a letter explaining that he was not legally liable for the loan, enclosing a copy of the application and promissory note for the loan, and requesting the opportunity to review his records with MDHE.⁴

4. Mr. Higgins received a letter dated May 24, 2013 from the U.S. Department of the Treasury, notifying him that his federal income tax refund of \$4,000 was being offset to repay a

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² Petitioner’s Complaint Exhibits 2 and 4.

³ Petitioner’s Complaint Exhibit 3.

⁴ Petitioner’s Complaint Exhibit 4.

non-tax federal debt, that is, the student loan. The notice advised Mr. Higgins that if he disputed the offset, he should contact the “U.S. Department of Education, c/o Missouri Dept of Higher Ed, Att’n: Federal Offset Unit, 100 Cambridge Street, Suite 1600, Boston MA 02114-2518[.]”⁵

5. On June 4, 2013, Mr. Higgins sent a letter to the U.S. Department of Education at the address provided, disputing the offset and indicating that he had enclosed supporting documentation.⁶

6. On October 29, 2013, MDHE sent Mr. Higgins another Notice of Proposed Offset of Missouri State Taxes, substantially similar to the one dated November 8, 2012, including notification that if payment was not arranged within 30 days, MDHE would certify Mr. Higgins’ debt to the Missouri Department of Revenue.⁷

Conclusions of Law

MDHE argues that we should dismiss Mr. Higgins’ appeal because we lack jurisdiction. We agree.

This Commission is established by statute, and our jurisdiction cannot be expanded beyond what is provided to us by statute. *St. Charles Co. Ambulance Dist. v. Mo. Dep’t of Health and Sr. Svs.*, 248 S.W.3d 52, 54 (Mo. App. W.D. 2008). By law, this Commission is empowered to hear certain types of appeals involving certain agencies, as specified in Chapter 621, RSMo (2000 and Supp. 2012). But those appeals and entities do not include student loan repayment disputes involving MDHE.

Mr. Higgins argues that we have jurisdiction under § 621.050.1, RSMo (2000), which provides for appeals to this Commission from any finding, order, decision or assessment of the Director of Revenue. The statute does not provide us with jurisdiction in this case, for two

⁵ Petitioner’s Complaint Exhibit 5.

⁶ Petitioner’s Complaint Exhibit 6 (the supporting documentation was not included with Petitioner’s exhibit).

⁷ Petitioner’s Complaint Exhibit 7.

reasons. First, Mr. Higgins did not file his appeal against the Director of Revenue, but against MDHE.

Even if he had filed it against the Director, Mr. Higgins does not allege in his complaint that the Director has issued any finding, order, decision or assessment against him at this time, nor did Mr. Higgins include a copy of any such document with his complaint. He simply alleges that “should” MDHE follow through with its October 29, 2013 notice of offset—that is, should MDHE certify the debt to the Director—MDHE “will cause [him] further wrongful damage[.]”⁸ Speculation that MDHE may certify a debt, and that the Director of Revenue may proceed to effect an offset, are insufficient to trigger our statutory authority to hear cases against the Director of Revenue, which is limited by law to appeals of findings, orders, decisions and assessments issued by him.

Apparently in view of the limitation on appeals contained in § 621.050.1, Mr. Higgins adds an argument that the Director did, in effect, make a decision:

3. The director of revenue determined, based upon representations of [MDHE] that [Mr. Higgins] was delinquent on a student loan which was being administered by [MDHE].

4. The director of revenue, through the agency of [MDHE] notified the U.S. Department of Education that [Mr. Higgins] owed a debt to [MDHE], and [MDHE] requested that the Secretary of the Treasury “offset” any federal tax refund against the debt allegedly owed by [Mr. Higgins] to [MDHE].

5. Pursuant to this request from the director of revenue and [MDHE], on May 24, 2013, the Department of the Treasury applied \$4,000.00 of [Mr. Higgins’] federal tax refund to [the] debt[.]

6. This “offset” was initiated by the actions of the director of revenue and [MDHE].

7. The cooperation of the director of revenue and [MDHE] is evidenced by the language contained in [the] November 8, 2012 letter⁹ to [Mr. Higgins].¹⁰

⁸ Petitioner’s Complaint, ¶ 13.

⁹ Petitioner’s Exhibit 3.

The argument is unavailing for at least two reasons. First, neither the November 8, 2012 letter, nor any other allegation in the complaint, nor exhibit attached to it, evidences the Director of Revenue's participation in the series of events that culminated in the U.S. Department of Treasury's May 2013 interception of Mr. Higgins' federal tax refund to offset a debt owed for a delinquent federal student loan account, let alone any decision issued by the Director.

Even if the Director had issued a decision that culminated in the May 2013 offset, substantially more than 30 days have passed since such a decision could even have been issued. And by the plain language of § 621.050.1, appeals thereunder must be filed in 30 days, a deadline Mr. Higgins did not meet.

Accordingly, we lack jurisdiction.

Summary

We grant the Respondent MDHE's motion to dismiss.

The hearing presently scheduled for March 12, 2014 is cancelled.

SO ORDERED on January 15, 2014.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner